

# Exhibit A

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Case No. 04-30130-MAP

\* \* \* \* \*

KATIE MILLIO, IRENE JOHNSON,  
JANINE HELLER and TOMAYITA  
STEVENSON,

Plaintiffs,

vs.

WHITMAN EDUCATION GROUP, INC.,  
CAREER EDUCATION CORPORATION,  
ULTRASOUND DIAGNOSTIC SCHOOL  
and LOUIS GIANNELLI,  
Defendants.

\* \* \* \* \*

DEPOSITION OF JANINE A. HELLER, a  
witness called on behalf of Whitman Education Group,  
Inc., Career Education Corporation, and Ultrasound  
Diagnostic School, taken pursuant to the applicable  
provisions of the Federal Rules of Civil Procedure  
before Cynthia A. Powers, Shorthand Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, at the law offices of Todd & Weld,  
LLP, 28 State Street, Boston, Massachusetts, on  
Thursday, October 13, 2005, commencing at 10:15 a.m.

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14 ALSO PRESENT

15 Brian Clancy  
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1 A. Yes.

2 Q. With respect to policies and  
3 regulations of Whitman Education Group and UDS, was  
4 there a policy against the use of illegal drugs and  
5 controlled substances --

6 A. Yes.

7 Q. -- on school premises?

8 A. Yes.

9 Q. Were you ever aware of any employees  
10 using cocaine at UDS?

11 A. Yes.

12 Q. Who caused cocaine at UDS?

13 MS. GARROW: I'm going to object and  
14 instruct her not to answer.

15 MR. MAZUREK: On what possible basis?

16 MS. GARROW: On the basis that --

17 MR. O'HARA: Fifth amendment grounds?

18 MS. GARROW: Well, no. First of all,  
19 are you asking people who used it on campus? This is  
20 to the extent you want to ask about individuals, you  
21 can do that, but to the extent you want to go  
22 anywhere beyond that, like asking Ms. Heller with  
23 regard to what she's doing, you can only ask her with  
24 regard to felonies or with regard to misdemeanors.

1 This is not a case about her misconduct.

2 MR. MAZUREK: Let's get the judge on  
3 the phone right now to see if we can resolve this  
4 issue. I am clearly entitled to explore this area  
5 for discovery purposes. If you want to have some  
6 kind of confidentiality agreement, I'd be happy to  
7 consider that. I'm entitled to find out about  
8 Ms. Heller's own conduct and other employees who may  
9 be witnesses or may be potential witnesses in this  
10 case and what they're doing.

11 MR. O'HARA: If I may, I have not  
12 heard a single word of privilege come from your mouth  
13 and objection and instruction not to answer. Just so  
14 we're crystal clear here, that's the only basis you  
15 have a right to instruct a witness not to answer a  
16 question. There's no privilege being asserted. We  
17 have a right to the answer. So be clear that if we  
18 go to the judge I have not heard a single assertion  
19 of any privilege of any kind and so absent that I  
20 think we're clearly entitled to the answer.

21 MS. GARROW: I understand that you  
22 think you're entitled. Ms. Heller will testify with  
23 regard to general questions regarding other  
24 individuals. Ms. Heller will not testify with regard

1 to anything relating to herself on the grounds that  
2 you are simply entitled -- this is not a case about  
3 misconduct and you're simply entitled to five years  
4 of misdemeanor, ten years of felony. You're not  
5 entitled to general questions regarding her bad --  
6 I'm going to instruct her not to answer. I'm happy  
7 to get the judge on the phone if that's what you want  
8 to do. I am going to instruct her not to answer with  
9 regard to herself.

10 MR. MAZUREK: Let me ask you about  
11 others.

12 MR. O'HARA: I take exception to that  
13 instruction. I think it's grossly inappropriate. I  
14 think it's violating the rules of discovery. I think  
15 it's delaying the deposition. I've heard nothing  
16 from you that indicates that there's any privilege.  
17 It is directly relevant to not only credibility, to  
18 her bias, to a whole host of issues that are live in  
19 this case, whether you agree they are or not.

20 MR. MAZUREK: I would note for the  
21 record that I join with Mr. O'Hara's exception.

22 Q. Ms. Heller, were you aware of any  
23 employees other than yourself at UDS using cocaine?

24 MS. GARROW: Are you asking generally?

1 MR. MAZUREK: Yes.

2 MS. GARROW: Are you asking on campus?

3 MR. MAZUREK: Generally.

4 MS. GARROW: Generally has nothing to  
5 do again with this case. Because you asked about the  
6 code of conduct, and the code of conduct specifically  
7 speaks to those doing drugs on the premises.

8 MR. MAZUREK: I'm asking her a  
9 different question now.

10 Q. Ms. Heller, are you aware of any UDS  
11 employees who use cocaine, I think you answered yes,  
12 and I want to know who?

13 MS. GARROW: I want to take a break to  
14 confer with my client.

15 MR. MAZUREK: I'm going to strongly  
16 object to that. It is inappropriate and I would not  
17 agree with that.

18 MS. GARROW: I'm a lawyer. I'm  
19 allowed to talk to my client.

20 MR. O'HARA: Your client has not asked  
21 to take a break.

22 THE WITNESS: I would like to take a  
23 break.

24 MR. O'HARA: Also no assertion of

1 privilege here, and I think it's inappropriate that  
2 there is a conference in the middle of a pending  
3 question. This is an inappropriate assertion.

4 MR. MAZUREK: Absolutely  
5 inappropriate. I want the record to reflect that it  
6 subjects the witness's testimony to high level of --  
7 it undermines the integrity of any testimony to the  
8 extent she purports to discuss with her attorney what  
9 her answer ought to be while a question at a  
10 deposition is pending.

11 MS. GARROW: My client has taken an  
12 oath to tell truth.

13 MR. O'HARA: I think we're entitled to  
14 have the answer first and you can go clarify like you  
15 have during lunch, during one of the breaks. I'd  
16 like to hear the answer to the question.

17 A. Can you repeat it one more time, I'm  
18 sorry, just so I'm --

19 Q. Yes, who at UDS used cocaine?

20 MS. GARROW: I'm going to object to  
21 the general question again and instruct you not to  
22 answer.

23 MR. MAZUREK: That's a different  
24 question. Now you are instructing this witness not



1 to answer without any basis of privilege?

2 MS. GARROW: I would like to have a  
3 conference with my client and then perhaps we can  
4 short circuit a lot of this.

5 Q. Who at UDS, which employee of UDS used  
6 cocaine on UDS's premises?

7 MS. GARROW: I'm going to object to  
8 that as well.

9 A. I would like to take a break and  
10 conference. I'm not comfortable right now.

11 Q. Why aren't you comfortable?

12 MS. GARROW: Because she's asked to  
13 talk to her lawyer.

14 A. I would like to talk to my lawyer.

15 Q. Do you know the answer to the  
16 question?

17 A. I would like to talk to my lawyer.

18 Q. Before you do that, do you know the  
19 answer to the question even though you're not telling  
20 me what the answer is at this point?

21 A. I would like to talk to my lawyer.

22 MR. MAZUREK: All right. Record has  
23 been established, the witness is refusing to answer  
24 the question until she talks to her lawyer, so...

1 MR. O'HARA: Are you instructing the  
2 witness not to answer the question? Is that your  
3 instruction presently?

4 MS. GARROW: My instruction is  
5 presently not to answer.

6 MR. O'HARA: You're instructing her on  
7 the basis of what?

8 MS. GARROW: On the basis that --

9 MR. O'HARA: Is there any privilege  
10 that you're using?

11 MS. GARROW: I believe that this is  
12 beyond the scope of discovery; that there is no basis  
13 for this question; that he is only entitled to ask  
14 her with regard to felonies or misdemeanors; felonies  
15 for ten, misdemeanors for five; and that is not what  
16 is pending.

17 MR. O'HARA: You're citing to a rule  
18 of admissibility. We're in discovery, and we're  
19 entitled to explore conduct that is highly germane to  
20 the allegations at issue here and the veracity and  
21 truthfulness of the allegations being lodged in this  
22 complaint. I can't possibly imagine that there's a  
23 basis upon which you could assert a proper  
24 instruction not to answer factual information that

1       pertains to this campus and witnesses that are  
2       testifying in this case.

3               MS. GARROW: We haven't established  
4       that yet.

5               MR. O'HARA: You haven't let us get an  
6       answer.

7               MS. GARROW: I understand what your  
8       position is, Mr. O'Hara. I just at this point do not  
9       believe that this is appropriate for discovery at  
10      this time and so I'm going to object and instruct her  
11      not to answer at this time.

12              MR. MAZUREK: Okay, well, let's take  
13      your break.

14              MR. O'HARA: We take exception.

15              MR. MAZUREK: And subject to our  
16      objections and exceptions to your course of conduct  
17      at this deposition, you can confer so that we can  
18      resume the deposition then.

19              MS. GARROW: Thank you.

20                      (Counsel conferred with witness)

21              MR. MAZUREK: Is the witness now  
22      prepared to answer my questions?

23              MS. GARROW: Yes.

24              MR. MAZUREK: All right.

1 Q. Ms. Heller, who at UDS used cocaine?

2 MS. GARROW: Ms. Heller is going to  
3 take the fifth amendment privilege here to the extent  
4 that it might implicate her.

5 Q. Other than yourself, who at UDS used  
6 cocaine?

7 MS. GARROW: She's going to take the  
8 fifth here as well to the extent there may be any  
9 implication relating to her.

10 MR. MAZUREK: Obviously the invocation  
11 of the fifth amendment is against self-incrimination.  
12 My question is directed toward the use of cocaine of  
13 individuals at UDS other than Ms. Heller just to be  
14 clear.

15 Q. Subject to that clarification,  
16 Ms. Heller, who other than yourself used cocaine at  
17 UDS?

18 MS. GARROW: To the extent that  
19 there's any implication, Ms. Heller is going to take  
20 the fifth amendment with respect to that question as  
21 well.

22 MR. O'HARA: Ms. Heller is going to  
23 take or she's asserting?

24 MS. GARROW: She's asserting.

1 MR. O'HARA: Are you asserting the  
2 fifth amendment privilege?

3 THE WITNESS: Yes.

4 MS. GARROW: Let me just say, you  
5 know, obviously you can do what you're going to do,  
6 and to the extent there is some protection proffered  
7 at some point or we can come to some agreement with  
8 the court, we would be potentially willing to change  
9 that assertion, but currently that is her assertion.

10 Q. Is Katie Millio one of the individuals  
11 who used cocaine at UDS?

12 MS. GARROW: Ms. Heller is going to  
13 assert the privilege to the extent there may might be  
14 any implication which relates to her.

15 MR. MAZUREK: She's asserting what  
16 privilege?

17 MS. GARROW: The fifth amendment  
18 privilege to the extent that anything implicates her  
19 and her involvement.

20 MR. MAZUREK: I'm not asking her about  
21 her or her involvement. I'm asking whether Katie  
22 Millio used cocaine at UDS.

23 MS. GARROW: She's going to assert the  
24 privilege; is that correct?

1 THE WITNESS: Yes.

2 MR. MAZUREK: The privilege against  
3 self-incrimination?

4 MS. GARROW: To the extent there's any  
5 further implication that relates to her, yes. You  
6 can ask all your questions, she's going to do the  
7 same with regard to questions in this capacity, but  
8 you can keep trying different ones, and there may be  
9 some that are on the outer limits that she's willing  
10 to answer.

11 Q. Is Irene Johnson one of the  
12 individuals who used cocaine at UDS?

13 MS. GARROW: She's going to assert the  
14 privilege to the extent that it may implicate her.

15 MR. MAZUREK: The privilege being?

16 MS. GARROW: The fifth amendment  
17 privilege. These are all fifth amendment privileges.  
18 I can say it each time if you'd like.

19 Q. Is Tomayita Stevenson one of the  
20 individuals who used cocaine at UDS?

21 MS. GARROW: Ms. Heller is going to  
22 assert the fifth amendment privilege to the extent  
23 there's any implication that might relate to her.

24 MR. MAZUREK: And therefore you're

1 instructing her not to answer that question?

2 MS. GARROW: Yes.

3 Q. Is Mary Biscaldi one of the  
4 individuals at UDS who used cocaine?

5 MS. GARROW: Fifth amendment  
6 assertion, I'm instructing her not to answer, same  
7 basis.

8 MR. MAZUREK: Are you instructing her  
9 not to answer any questions with respect to anyone at  
10 UDS who used cocaine?

11 MS. GARROW: Yes, to the extent that  
12 there may be some implication that might relate to  
13 her and the fifth amendment privilege, yes, and I  
14 will instruct her not to answer those questions at  
15 this time.

16 MR. MAZUREK: My question of you,  
17 counsel, then is I don't see, it's not apparent in  
18 any way, shape, or form how my questions as they  
19 relate to other employees would have any implications  
20 to Ms. Heller and thereby give rise to even an  
21 arguable basis for the assertion of privilege under  
22 the fifth amendment's guard against  
23 self-incrimination. So can you state something on  
24 the record in that regard if you're basing it on some

1 type of implication. That's what I'm very  
2 uncomfortable and uncertain about to the extent  
3 you're asserting this highly important privilege on  
4 this very important matter in this litigation.

5 MS. GARROW: The basis of the  
6 assertion of privilege here is to the extent that any  
7 of -- and obviously I'm not saying that this is so,  
8 but to the extent that any of these individuals might  
9 have information that might lead to some sort of  
10 self-incrimination, I would instruct Ms. Heller not  
11 to answer, to her incrimination, I would instruct her  
12 not to answer those questions in any regard because  
13 of the potential for violation of her fifth amendment  
14 rights.

15 MR. MAZUREK: Let me ask this  
16 question.

17 MS. GARROW: Again as I said before,  
18 to the extent the court has a different view or to  
19 the extent we can get some protection at some point,  
20 then the assertion may change.

21 MR. O'HARA: You've said that once  
22 before. We have the witness here and now. This  
23 isn't a privilege that can be shifted like the wind  
24 to cut off discovery now and then only to be at your



1       whim waived at some future point. We have the  
2       witness here now. If there is an assertion of fifth  
3       amendment privileges, you're making it now and  
4       preventing us from getting discovery in this case  
5       now. We will take exception to that and press the  
6       issue at the appropriate place.

7                       That said, it streaks me that the  
8       invocation of the fifth amendment privilege here in  
9       this civil suit has certain admissible evidentiary  
10      overtones to it, so that the fact that she's invoking  
11      her privilege here and now to the use of cocaine and  
12      others will surely have some impact.

13                    MS. GARROW: I understand that. At  
14      this point I'm not comfortable instructing her to go  
15      forward and answer. Otherwise I would do so. That's  
16      where we are at this point. And I understand what  
17      you're saying and I understand your objection. I  
18      believe I've made ours as clear as I can on the  
19      record, and that's where we are.

20                   MR. MAZUREK: All right. Let me just  
21      ask this question then for the record.

22                   Q.     Ms. Heller, would you please identify  
23      those individuals at UDS who used cocaine?

24                   MS. GARROW: Ms. Heller is going to

1 assert the privilege we have been discussing for the  
2 record and once again we would make.

3 MR. MAZUREK: And you're instructing  
4 her not to answer on that basis.

5 MS. GARROW: I'm instructing her not  
6 to answer on this basis and we would perhaps, she  
7 will perhaps waive that assertion at some other time,  
8 but she is not at this time.

9 Q. Okay. Ms. Heller, which UDS employees  
10 used cocaine on school premises?

11 MS. GARROW: Same assertion, same  
12 privilege and same reservation of rights, same  
13 instruction not to answer.

14 MR. O'HARA: And you're going to  
15 follow that instruction?

16 A. Yes.

17 Q. Ms. Heller, which employees of UDS  
18 used illegal drugs other than cocaine?

19 MS. GARROW: Same objection, same  
20 privilege, same instruction not to answer.

21 Q. Which --

22 MS. GARROW: I'm sorry, is that on UDS  
23 premises?

24 Q. That's my next question. Which

1 employees of UDS used illegal drugs other than  
2 cocaine on UDS premises?

3 MS. GARROW: Same assertion of fifth  
4 amendment and instruction not to answer.

5 Q. Were you aware of other employees who  
6 used illegal drugs other than cocaine?

7 MS. GARROW: Same assertion and same  
8 instruction not to answer.

9 Q. Were you aware of other employees of  
10 UDS who used illegal drugs on UDS's premises other  
11 than cocaine?

12 MS. GARROW: Same assertion, same  
13 instruction not to answer.

14 Q. Were you aware of any UDS employees  
15 who used alcohol on UDS premises?

16 A. No.

17 Q. Did you ever use alcohol, drink  
18 alcohol on UDS premises while you were employed  
19 there?

20 A. No.

21 Q. Was there a time when you were  
22 employed at UDS that you were under investigation for  
23 improper conduct?

24 A. No.